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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of

Interconnection Between Local Exchange Carriers
and Commercial Mobile Radio Service Providers

CC Docket No. 95-185

Equal Access and Interconnection
Obligations Pertaining to
Commercial Mobile Radio Service Providers

CC Docket No. 94-54

To: The Commission

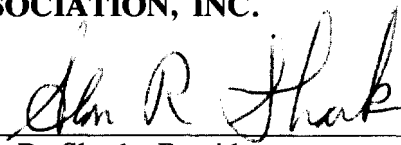
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COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
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**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, 47 C.F.R. § 1.415, respectfully submits its Comments in the above-entitled proceeding.¹ The instant Notice seeks comment on policies governing interconnection arrangements between local exchange carriers ("LECs") and commercial wireless providers, including personal communications service ("PCS"), cellular, and Specialized Mobile Radio ("SMR") service operators. Specifically, the decisions reached as a result of this proceeding are intended to address the FCC's concern that existing Commission rules do not adequately balance the interests of LECs and commercial mobile radio service ("CMRS") licensees in respect to interconnection matters. To the extent that such an imbalance exists, it will deter optimal competition between the providers of wireline and wireless

¹ Notice of Proposed Rulemaking, CC Docket No. 95-185, FCC 95-505 (rel. Jan. 11, 1996) ("Notice").

services.

2. AMTA strongly supports the Commission's effort to promote robust competition between these segments of the telecommunications marketplace. That effort will require implementation of interconnection rules which recognize both the critical nature of interconnection rights and obligations in the provision of service and the still substantially superior market power possessed by LECs. Until these highly complex matters are resolved fully, AMTA endorses the Commission's tentative conclusion that interconnection rates should be priced on a "bill and keep" basis as an interim measure, with neither the wireless carrier nor LEC charging the other for terminating traffic on its network. Notice at ¶ 3.

3. The Association also endorses the FCC's recognition that the CMRS moniker encompasses a broad variety of service offerings with significant differences in the size of the systems and the scope of the services provided, and that those distinctions may dictate differing interconnection arrangements. Notice at n. 2. Some systems classified by the Commission as CMRS, in particular certain SMR systems, provide dispatch-oriented communications with only ancillary interconnection, and are marketed primarily to business rather than general consumer subscribers. AMTA urges the Commission to adopt interconnection provisions which require LECs to provide access to their networks under economically reasonable terms, prices and conditions, but which are sufficiently flexible to allow wireless providers themselves to determine the type and level of interconnection appropriate for their particular offering.

I. INTRODUCTION

4. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked

and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country which, to the extent they are interconnected with the public switched telephone network, are classified by the FCC as CMRS.² Thus, the Association and its members have a significant interest in the outcome of this proceeding.

II. BACKGROUND

5. The obligation of common carriers, such as LECs, to offer interconnection to other carriers under commercially reasonable terms and conditions is undisputed and flows from the Communications Act itself. 47 U.S.C. § 201. Current Commission rules require LECs to negotiate in good faith to provide the interconnection arrangement sought by CMRS providers in accordance with the principle of mutual compensation, and to furnish interconnection for interstate traffic at reasonable, non-discriminatory rates.³ Notice at ¶ 14.

6. Nonetheless, in numerous proceedings before the Commission, wireless carriers have indicated that LECs, in general, are not complying with those FCC requirement, but, in fact, are using their bottleneck, monopoly control of the local network to impede potential CMRS competition. *Id.* Moreover, it is not clear whether the concept of mutual compensation is optimal when, as in the current environment, there is a distinct imbalance between the amount of traffic terminated on the competing networks. *Id.* For these reasons, and as part of its

² Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411, ¶ 90 (1994).

³ See The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion & Order, 59 RR 2d 1275 (App. B)(1986) ("Interconnection Order and Policy Statement"); clarified, Declaratory Ruling, 2 FCC Rcd 2910 (1987), *aff'd on recon.*, 4 FCC Rcd 2369 (1989).

ongoing effort to promote maximum competition in the telecommunications marketplace, the Commission has determined to reexamine, and modify where appropriate, its policies regarding CMRS-LEC interconnection arrangements.

III. FCC INTERCONNECTION POLICIES SHOULD PERMIT WIRELESS OPERATORS TO DETERMINE THE APPROPRIATE INTERCONNECTION ARRANGEMENT FOR THEIR SPECIFIC OFFERINGS AND TO ACQUIRE INTERCONNECTION CAPABILITY UNDER COMMERCIALLY REASONABLE RATES, TERMS AND CONDITIONS.

A. Appropriate Levels of Interconnection Should be Determined by the Wireless Operator Rather than Dictated by FCC Rule or LECS.

7. The primary focus of this proceeding is on the interconnection rights and obligations of those CMRS providers, specifically broadband PCS, cellular and "wide-area" SMR, which intend to offer a ubiquitous, consumer-oriented interconnected service to broad segments of the population. To the extent that such offerings have the potential of competing with, or perhaps even replacing, the existing wireline telephone network, it is imperative that they not be impeded from doing so by virtue of anti-competitive LEC interconnection arrangements.

8. However, as the Commission has already recognized, not all commercial wireless systems have identical interconnection interests. For example, the majority of SMR systems currently offering telephone interconnection acquire that capability as regular business subscribers, not as co-carriers or "peers".⁴ While more balanced LEC-wireless interconnection

⁴ As AMTA has advised the Commission on numerous occasions, not all commercial wireless systems offer interconnection capability. Some 800 MHz and 900 MHz SMR operators, as well as certain commercial 220 MHz licensees, have elected not to interconnect their systems with the public switched telephone network, and instead offer only dispatch service. Thus, by definition, they are not CMRS providers. See, 47 U.S.C. § 332.

policies may prove advantageous for these operators, and even perhaps prompt a reevaluation of their interconnection offerings, it is imperative that licensees retain the right to select the optimal arrangement for their individual systems. Some may elect not to be treated as connecting, or "peer" carriers depending on the rights and obligations associated with that status. Similarly, the amount and sophistication of interconnection capability desired by their customers may dictate continuation of their business subscriber status as an efficient, competition-enhancing solution. Those decisions can be left to each operator's discretion as long as the FCC's rules direct the unbundling of the various interconnection components and prohibit LECs from imposing exclusionary, anti-competitive terms or conditions on interconnection arrangements.

B. "Bill and keep" Should be Approved as the Interim Billing Arrangement between LECS and Wireless Carriers Until Appropriate Mutual Compensation Provisions are Implemented.

9. The Association supports the Commission's objective of promoting full and fair competition between wireless and wireline services. As the American population generally, and its workforce in particular, becomes increasingly mobile, its communications capabilities must follow suit. To the extent that regulatory, rather than technical, limitations impede the development of a competitive communications marketplace, the Commission has a statutory obligation to revisit applicable rules and policies.

10. As noted supra, LECs have been subject to a mutual compensation obligation vis-a-vis connecting carriers, including wireless carriers, for more than a decade. Such arrangements appear to be the norm among geographically proximate wireline operators, but it is reported that they are the rare exception, if they exist at all, in the wireline-to-wireless environment.

11. AMTA encourages the Commission to use this proceeding as the vehicle for completing the transition to mutual compensation between parties that elect co-carrier status. In that respect, the Association tentatively agrees with the FCC's assumption that the cost of facilities dedicated to specific parties should be recovered from those entities through non-traffic sensitive rates, while the cost of shared facilities should be recovered through peak hour, traffic-sensitive charges when the cost varies with the capacity required. Achieving that allocation of costs should be the Commission's long-term objective in crafting its interconnection rules and policies; however, the complexity of completing that task should not be used to justify the patently inequitable arrangements used today which work to the serious economic disadvantage of wireless commercial operators and their customers.

12. Thus, AMTA supports the interim "bill and keep" provision proposed in the Notice for several reasons. First, it is a simple process which could be implemented immediately. Second, given the economic inequities that have characterized the LEC-wireless interconnection arrangements to date, it would serve a remedial function. Third, it is likely to discourage LECs from adopting dilatory practices in working to resolve the admittedly complex issues relating to mutual compensation arrangements.

13. Although AMTA supports the FCC's tentative conclusion regarding the use of "bill and keep" provisions, it is concerned that the scope of the Commission's proposal may be unintentionally restrictive. Specifically, the Notice indicates that only those interconnection rates for "local switching facilities and connections to end users should be priced on a 'bill and keep' basis", with rates for dedicated transmission facilities provided by LECs to connect LEC and wireless networks based on existing access charges for similar transmission facilities. Notice

at ¶ 15.

14. In AMTA's opinion, the interim provisions should encompass interconnection wherever it occurs -- whether at an end office, at an access tandem or at any other point in the wireline network. Moreover, the Commission's long-term policies should also be sufficiently flexible to address interconnection rights wherever in the network those rights are implemented. Such an approach will further the FCC's intention of allowing the marketplace rather than regulatory fiat to determine how systems should be defined.

15. The Association is particularly sensitive to the importance of adopting pliant interconnection policies. Traditionally, SMR licensees were subject to restrictions on the provision of interconnected service not applicable to other, competitive services.⁵ Many of its members are only now beginning to evaluate interconnection options, and are still in the process of determining what arrangements are optimal for their particular circumstances. Their decisions regarding whether, where and under what conditions they should interconnect with the wireline network should be based on the unfettered workings of the competitive marketplace, not pre-ordained by rigid regulatory determinations. For this same reason, AMTA recommends that information relating to interconnection arrangements should be available to the public, whether through a tariff or public disclosure process. Smaller operators are uniquely disadvantaged when such agreements are kept confidential since they typically lack the economic power to extract the most favorable terms unless the availability of those terms is known publicly.

⁵ See 47 C.F.R. § 90.477(b).

C. Wireless Interconnection Policies Should be Determined at the Federal Level.

16. The Notice seeks comment on three alternative, jurisdictional approaches to implementing whatever interconnection policies are adopted. The FCC questions whether it should adopt a federal policy with respect to interstate services which would serve as a model for state intrastate rules; whether there should be a mandatory federal framework for both interstate and intrastate services, leaving to the states the right to select a particular intrastate approach from among a range of federally-approved choices; or whether federal requirements should govern both interstate and intrastate LEC-CMRS interconnection. Notice at ¶¶ 107-110. These jurisdictional issues arise, in part, because of the Congressional directive to the Commission in the House Report accompanying the 1993 Budget Act⁶ that, "The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."⁷

17. AMTA appreciates the need to maintain the appropriate balance between state and federal interests in a rapidly evolving telecommunications arena. However, in light of the interrelationship between intrastate and interstate communications in the mobile environment, the Association concurs with the positions of those parties that have urged the FCC to establish a uniform federal policy governing all LEC-CMRS interconnection.⁸ To the extent that any

⁶ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993).

⁷ House Report on H.R. 2264 at 261 (1993).

⁸ See, e.g., Comments of Columbia PCS, Inc., Comcast Corporation, Cox Enterprises, Inc., and New Par.

state interconnection policy is inconsistent with the Federally-adopted framework, it will inhibit the development of the seamless, national network envisioned by Congress and must be preempted.

IV. CONCLUSION

18. For the reasons discussed above, AMTA urges the Commission to proceed promptly to adopt rules in this proceeding consistent with the positions proposed herein.

CERTIFICATE OF SERVICE

I, Jacqueline Lynch, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this 4th day of March, 1996, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing Comments to the following:

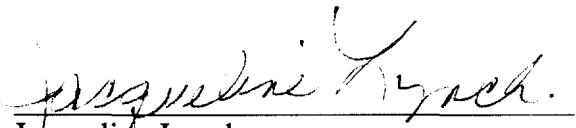
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